

Date of decision: 07/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether..

GADANI SAMIR D

vs

GUJARAT UNIVERSITY

Appearance:

MR GIRISH PATEL for Petitioners
SERVED BY DS for Respondent No. 1, 2, 3

MR. S.N. SHELAT, for respondents

Coram : MR.JUSTICE R.K.ABICHANDANI

ORAL JUDGEMENT

The petitioners seek a declaration that the decision of the respondent authorities to club together the students including the petitioners passing the Third MBBS Examination under the old Course and the students passing the Third MBBS Examination under the new Course for the purpose of admission to the Post Graduate Courses in January, 1996, is arbitrary and violative of Article 14 of the Constitution of India and pray for a direction that the respondents should allot 1/4th of the total seats available for admission to P.G Courses for the year 1996 to the petitioners and other similarly situated students and 3/4 seats to the new Course students. In the alternative, a

direction is sought that the respondents should allot the entire 75% of the total seats for the students seeking admission to P.G Courses in the term starting from January, 1996. By an amendment in the petition, a declaration is now sought that Rule 1.1(c) and Rule 7.1(v) of the Post Graduate Admission Courses Rules of 1996 are unconstitutional and void and therefore, cannot be enforced.

The petitioners belong to a batch which was admitted to First MBBS Course in 1989. They cleared their First MBBS in June, 1991, Second MBBS in December, 1992 but failed in the Third MBBS Examination which was held in June, 1994, thereafter passing the same in December, 1994. They cleared the Examination under the old Course. Their internship period of one year was over in December, 1995 and they are aspiring to join Post Graduate Course, the admission to which is yet to be given for the term commencing from January, 1996. When they had joined the First MBBS Course in January, 1989, they were due to appear in the examination in December, 1990, but that examination could not be held because of some agitations and ultimately it was held in June, 1991. According to the petitioners, they had therefore suffered a disadvantage of not being able to appear at the examination which was due to be held in December, 1990.

Under Rule 2 of the Rules governing the admission to the Post Graduate Degree and Diploma Medical Courses other than M.Ch and D.M at the affiliated Medical Colleges (effective from 1.1.1996), 25% of the total available seats in an academic year in various Post Graduate Degree and Diploma Courses in each subject are required to be filled up on the basis of All India Competitive Entrance Examination as per the directive of Hon'ble the Supreme Court and as per Rule 3 remaining 75% of the total seats will be filled up by the "Admission Committee" of the University. For the purpose of this selection to be done once in each academic term, first academic term would be from 1st January to 30th June and second academic term would be from 1st July to 31st December as per Rule 3.1. It is also provided in Rule 3.2 that seats allotted under Rule 3 will be distributed in the ratio of 3:1 for the First and Second Academic Term respectively, Therefore, 3/4th of the 75% of total seats was allotted to the First Term and 1/4th to the Second Term. The Vice-Chancellor is, under Rule 3.3, empowered to make adjustment of seats as the circumstances may demand.

It has been contended on behalf of the petitioners that having regard to the fact that the petitioners had lost one term due to agitation and could not appear in December, 1990, the Vice-Chancellor ought to have raised the number of seats available for January, 1996 term to all the 75% of the total number of seats. It was submitted that in the past for June, 1995 batch, the number of seats was by carrying forward 3/4th of the seats which were allocable for January, 1995, raised to all

the 75% of total seats by adding 3/4th of January, 1995 to 1/4th which were allocable to June, 1995. The petitioners had appeared in the Third MBBS Examination in June, 1994 and if they had cleared that examination they too would have got the benefit of this increased number of seats due to readjustment made in June, 1995 as a result of candidates not being available for January, 1995. The petitioners however, unfortunately failed in that examination and could not get the benefit of this increased number of seats which they could have got in June, 1995 after completion of one years' internship had they passed the Third MBBS Examination in June, 1994. For increasing the allocable seats in June, 1995 there was a strong reason viz. that in January, 1995 there were no candidates who could be admitted because of the effect of the First MBBS Examination of 1989 batch being held in June, 1991 instead of Sec. 1990 due to agitations. As to what percentage of seats should be allotted for the First Term and what should be allotted to the Second Term, the University would be in a best position to take decisions and it would not be open for this Court to go behind such matters of policy and direct the University to allocate a particular percentage of seats for a particular Term or to raise or reduce the same. For January, 1996 term the situation which existed for increasing the seats in June, 1995 does not exist and therefore, the contention that the allocation of seats for January, 1996 should be raised, cannot be accepted.

As regards difference in syllabus of old course and the new course of the candidates who cleared the Third MBBS Examination in December, 1994 it is impossible to create a dichotomy and to provide separate standards between the candidates who appeared at the old course and those who appear in the new course for the purpose of admission to the Post Graduate Course. It will be noticed from the eligibility rules for admission to the Post Graduate Courses that even students from other Universities can be considered for admission. Obviously, courses in other University may be different. The Eligibility Rule 1.1 contemplates consideration of candidates who passed Third MBBS Examination at First, Second, Third and Fourth trial. Moreover, it is hazardous to guess that the additional 200 marks paper in the new course would have uniformly benefitted all the students who appeared in the new course. It as well could be viewed as an additional burden on them because the new course was now of total 1200 marks as against the old course of 1000 marks. The uniform treatment to the candidates who passed in December, 1994 whether under the old or under the new course for the purpose of considering them for the Post Graduate Course cannot therefore, be said to be unjust or arbitrary.

The challenge against the validity of Rule 7.1(v) which provides that while calculating the percentage, it should be modified by reduction of 1.5 for each unsuccessful trial in the

concerned examination was levelled only on the ground that there was no advance intimation of the amendment in the Rules given to the students. It is pointed out that alongwith the admission forms the rules were duly circulated. As held by this Court in Prashant Vs. Gujarat University - XXXI (2) GLR 1066, a student has on admission to the First MBBS Course, no right for admission to Post Graduate Course. If, in order to achieve equality the University has decided to uniformly apply the new rule to all candidates seeking admission to Post Graduate seats on January, 1996 onwards, it cannot be said that in doing so it has acted arbitrarily. Till admissions are given in the Post Graduate Course, no rights can be said to have accrued in favour of the petitioners and therefore, change in the admission rules cannot be assailed on the ground of adversely affecting any rights of the petitioners.

This rule appears to have been framed by the University following the recommendations of the Medical Council of India, a copy of which is referred to by the learned Counsel appearing for the parties. In the recommendations, under the sub-title "Facilities for Post Graduate Students", it is stated that there would be two types of Post Graduate students viz.:-

- (a) Those holding posts in the same Department like Resident, Registrar, Demonstrator etc. Adequate number of paid posts should be created for this purpose.
- (b) Those receiving stipends. The stipends should normally be Rs. 300 per month payable for the duration of that course.

The students for both these categories (a) and (b) shall be full time Resident.

It is thus, clear that the Medical Council of India recommended that all the students admitted to Post Graduate Courses should be full time Residents either holding the posts named in clause (a) or being stipendary students under clause (b). Therefore, Rule 1.1(c) which has been framed by the University now provides that a student would be eligible for Post Graduate Courses in respect of Clinical subjects where he has been granted Residency in the subject. The word "Residency" is not confined in Rule 1.1(c) to only Resident Doctors. It would include Registrar, Demonstrator etc. It would now, in view of the recommendations of the Medical Council of India, include stipendary residents also. As to what number of seats should be stipendary which are now to be full time residents, the matter will be required to be worked out by the concerned authorities in the light of the new Rules framed pursuant to the recommendations of the Medical Council of India.

The attack against the validity of the provisions of Rule 1.1(c) of the Admission Rules is on the ground that the admission is now confined only to resident doctors and this had the effect of reducing the number of seats which were available for admission to the Post Graduate Courses. Rule 1.1(c) provides as under:-

"Only those candidates who fulfil the following conditions shall be eligible for admission to P.G Medical Courses"

(c) No student will be eligible for admission to Post Graduate Course in respect of Clinical subjects, unless he has been granted Residency in the subject for which Post Graduate admission is sought....."

This Court while considering the question as to whether the students have a right to claim non-stipendary registrations for Post Graduate seats, in Dr.Bharat Koyani and ors. Vs. Ahmedabad Municipal Corporation and anr. - Special Civil Application No. 5335 of 1984 decided on February 21, 1985 negatived the contention that the authorities had acted arbitrarily in not filling in the vacancies by admitting students to P.G Courses as non-stipendary students. In that case also a contention was taken up by the authorities that the method of giving non-stipendary registration was grossly violative of the method of Post Graduate teaching as emphasised by the Medical Council of India since such non-stipendary registered student does not stay in the Campus and is not given any facility regarding management and treatment of patients' care and is also not provided any stipend. The requirement that the student while doing his Post Graduate studies should be a resident of the campus, is a rational requirement having nexus with the object of providing higher education in the field of medical science. Therefore, the requirement in Rule 1.1(c) that no student will be eligible for admission to Post Graduate Courses in the Clinical subjects unless he has been granted Residency in the subject cannot be said to be unjust or arbitrary. The requirement is clearly intended to bring about higher standards of efficiency in the candidates admitted to the Post Graduate Course, who by virtue of their residing in the campus, would be exposed to more intensive and continuous training. Therefore, the impugned Rule 1.1(c) cannot be said to be arbitrary or violative of Article 14 of the Constitution as contended on behalf of the petitioners.

Under the above circumstances, the petition fails and is rejected. Notice is discharged with no order as to costs.
